

Hon. Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JENNYL CALUGAS,

Plaintiff,

vs.

PATENAUDE AND FELIX, A.P.C., a
California Corporation; and MATTHEW
CHEUNG, an individual,

Defendants.

No. 2:15-cv-01332-RAJ

DECLARATION OF MARC
ROSENBERG IN RESPONSE TO
MOTION TO WITHDRAW

Marc Rosenberg states and declares as follows:

1. I am an attorney for Defendants in the above-captioned matter. I am competent to testify and do so from personal knowledge.

2. On August 19, 2015, Plaintiff filed this lawsuit against Mr. Cheung. (Dkt 1).

3. On September 14, 2015, Plaintiff filed an Amended Complaint in this lawsuit against Mr. Cheung. (Dkt 8).

4. On October 2, 2015, I filed an Answer to Plaintiff's Complaint on behalf of the Defendants in this matter. (Dkt 13).

5. On October 16, 2015, I filed an Answer and Third-Party Complaint against Antoinette Davis on behalf of Defendants/Third-Party Plaintiffs in this matter. (Dkt 14).

DECLARATION OF MARC ROSENBERG IN
RESPONSE TO MOTION TO WITHDRAW - 1
2:15-cv-01332-RAJ
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LEE · SMART

P.S., Inc. · Pacific Northwest Law Offices

1800 One Convention Place · 701 Pike Street · Seattle · WA · 98101-3929
Tel. 206.624.7990 · Toll Free 877.624.7990 · Fax 206.624.5944

1 6. On November 6, 2015, I propounded discovery requests on Plaintiff on behalf of
2 my client. Ex. 1 [11/06/15 Email and Discovery Requests]. The discovery requests were very
3 modest and straightforward, consisting of only six Interrogatories and six Requests for
4 Production. *Id.*

5 7. On December 7, 2015, Plaintiff requested a week-long extension to respond to
6 the discovery requests, which I immediately granted. Ex. 2 [12/07/15 Email].

7 8. On December 16, 2015, when no discovery responses were received, counsel
8 queried as to the status of discovery responses. Ex. 3 [Chain email of 11/16/15-11/18/15].

9 9. On December 18, 2015, I followed up and was advised that Plaintiff would
10 provided a “response” that day. *Id.* Later that day, Plaintiffs’ counsel moved to withdraw.
11 (Dkt 30). In their motion, Plaintiffs’ counsel concedes that Plaintiffs’ discovery responses are
12 overdue. (Dkt 30 at 2) (“[t]his case has just begun and the only pressing deadline in this case
13 regards the Plaintiff’s delayed replies to interrogatory and requests for production propounded
14 by Defendants Patenaude & Felix, A.P.C.”).

15 10. On December 18, 2015, I conferred with Plaintiffs’ counsel Kirk Miller, of the
16 law firm of Kirk D. Miller, PS. Mr. Miller informed me that Plaintiff had been provided with
17 the discovery propounded by Defendants, but had since become nonresponsive. Mr. Miller
18 suggested that I call Plaintiffs’ counsel attorney Christina Henry at the law firm of Henry,
19 DeGraaff & McCormick, PS or Antoinette M. Davis of the Law Offices of Antoinette M. Davis
20 Law, PLLC.¹

21
22 ¹ It is unclear why Plaintiff needed three separate law firms to represent her. It seems to be a trend in FDCPA
23 cases, where Plaintiffs’ counsel apparently seek to build up attorney fees. In any case, I decided to call Ms. Henry
24 and not Antoinette Mr. Davis because she is a represented party in this litigation, and, not having received
25 unambiguous permission from her two attorneys, though it was sought, I felt that the ethical rules prevented me
from contacting Ms. Davis directly. *See e.g., Engstrom v. Goodman*, 166 Wn. App. 905, 271 P.3d 959 (2012), *rev. denied*, 285 P.3d 884 (2012); *In re Disciplinary Proceeding Against Carmick*, 146 Wn.2d 582, 597, 48 P.3d 311, 319 (2002). As Plaintiff was represented by three separate law firms, and her own two counsel, I did not think there would be any prejudice to Plaintiff.

1 11. On December 21, 2015, I then spoke to Ms. Henry. Ms. Henry confirmed that
 2 the discovery had been sent to Plaintiff, but that all she could say was that she had not heard
 3 back from her client. I indicated that I wished to consider the call a discovery conference, but
 4 Ms. Henry said that, because it had not been designated as a discovery conference prior to the
 5 call, that I needed to send an email to all counsel and request a discovery conference.
 6 Following the conference with Ms. Henry, I therefore sent an email requesting a discovery
 7 conference. Ex. 4 [11/21/15 Email]. There was no response from Plaintiffs' counsel to the
 8 request by the time of the filing of this response brief.

9 12. Defendants do not object to withdrawal of Plaintiffs' counsel, so long as it does
 10 not interfere with an orderly discovery process. However, we believe Defendants are entitled
 11 to response to the overdue responses to their discovery requests. Therefore, we request that any
 12 order entered by the Court regarding the withdrawal of counsel, should include a deadline for
 13 Plaintiff to provide discovery responses, and it should be confirmed that such order is timely
 14 provided to Plaintiff, so that discovery responses will be provided in an orderly manner.

15 13. The attached exhibits are true and correct copies of the originals:

16 **Exhibit 1.** 11/06/15 Email and Discovery Requests

17 **Exhibit 2.** 12/07/15 Email

18 **Exhibit 3.** Chain email of 11/16/15-11/18/15

19 **Exhibit 4.** 11/21/15 Email

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3 I declare under the penalty of perjury under the laws of the State of Washington that the
4 foregoing is true and correct to the best of my knowledge.

5 SIGNED in Seattle, Washington this 23rd day of December, 2015.

6 LEE SMART, P.S., INC.

7 By: /s/ Marc Rosenberg

8 Marc Rosenberg, WSBA No. 31034
9 Of Attorneys for Defendants
10 Patenaude & Felix, A.P.C., and
11 Matthew Cheung

12 1800 One Convention Place
13 701 Pike St.
14 Seattle, WA 98101-3929
15 (206) 624-7990
16 mr@leesmart.com

CERTIFICATE OF SERVICE

I hereby certify that on the date provided at the signature below, I electronically filed the preceding document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following individuals:

Antoinette Marie Davis	tonie@toniedavislaw.com
Kirk D Miller	kmiller@millerlawspokane.com
Christina Latta Henry	chenry@hdm-legal.com
C Steven Fury	steve@furyduarte.com
Vonda Michell Sargent	sisterlaw@me.com

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, to the best of my knowledge.

Dated this 23rd day of December, 2015 at Seattle, Washington.

LEE SMART, P.S., INC.

By: /s/ Marc Rosenberg
Marc Rosenberg, WSBA No. 31034
Of Attorneys for Defendants
Patenaude & Felix, A.P.C., and
Matthew Cheung

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701 Pike St.
Seattle, WA 98101-3929
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mr@leesmart.com